

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

<b>ANTONIO PENA ARGUELLES,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>V.</b>	)	<b>CASE NO. SA-12-MC-707-OLG</b>
	)	
<b>CHECK NUMBER 9552, DATED</b>	)	
<b>JULY 9, 2012, IN THE AMOUNT OF</b>	)	
<b>\$201,187.50,</b>	)	
	)	
<b>Respondent.</b>	)	

**UNITED STATES OF AMERICA'S RESPONSE TO ANTONIO PENA-ARGUELLES'  
CORRECTED MOTION FOR RETURN OF SEIZED PROPERTY**

Comes now, the United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney and makes this Response to Antonio Pena-Arguelles' Corrected Motion for Return of Seized Property (hereinafter Motion for Return of Property) pursuant to Fed. R. Crim. P. Rule 41(g), and states the following:

**I.**

On February 15, 2012, Antonio Pena-Arguelles (hereinafter Pena-Arguelles) was indicted in the Western District of Texas, San Antonio Division under criminal case number: SA-12-CR-102-OLG, for violations of Title 18 U.S.C. §§ 1956 and 1957, for Conspiracy to Launder Monetary Instruments from on or about the year 2000 and continuing through the date of the indictment in 2012. The criminal case is currently pending on the docket of this honorable Court.

On July 12, 2012, First National Bank check number: 9552, dated July 9, 2012, in the amount of \$201,187.50 (hereinafter referred to as the Respondent Currency), which was made payable to "Antonio Pena" was seized at Pena-Arguelles' residence located at 311 Joshua Way, San Antonio, Texas 78258. This residence is named in the United States of America's Notice of Demand

for Forfeiture contained in the previously mentioned indictment. The First National Bank check was discovered by law enforcement officers during an inventory search of a vehicle that had been properly seized by law enforcement officers at the Joshua Way residence. The seizure of the Respondent Currency was based on a well recognized exception to the Fourth Amendment and was therefore a lawful seizure. As to the source of the funds themselves, the United States contends that the Respondent Currency represents proceeds of illegal activity as set forth in the previously mentioned indictment and is subject to forfeiture to the United States as stated therein.

## II.

On July 20, 2012, Antonio Pena-Arguelles filed a Corrected Motion for Return of Seized Property (Doc. 2) pursuant to Fed. R. Crim. P. Rule 41(g), alleging that there was no basis for the seizure of the Respondent Currency.

Pena-Arguelles' Motion for Return of Property attached a document labeled "Assignment" as Exhibit 2 . This Assignment is signed under penalty of perjury by Pena-Arguelles and is dated the same date as the filing of the Motion for Return of Seized Property, July 20, 2012

## III.

The United States contends that Rule 41(g) motions are more commonly used when no forfeiture action has commenced or for property held an unreasonable length of time without instituting forfeiture proceedings or if the delay rises to the level of a violation of due process. *See United States v. Sims*, 376 F.3d 705 (7<sup>th</sup> Cir. 2004); *United States v. U.S. Currency in the Amount of \$146,800*, 1997 WL 269583 at \*5 (E.D.N.Y. 1997). None of these situations apply in the instant case. On the contrary, DEA is timely commencing the administrative process. In pertinent part, Title 18 U.S.C. § 983(a)(1)(A)(I) and (iv), provide that "a seizing agency must send notice of the forfeiture to interested parties at least within 60 days of the seizure . . ." Currently, DEA is in the

process of sending notice to all interested parties. This notice will detail the procedures for contesting the administrative forfeiture and give specific instructions for filing a Claim of Ownership with DEA for the Respondent Currency. If a claim is filed, the claim will be referred to the United States Attorney's Office for consideration of a judicial forfeiture action.

The United States argues that Pena Arguelles has an adequate remedy at law, namely: filing a claim in the administrative forfeiture proceeding. *See \$8,050.00 in U.S. Currency v. United States*, 307 F. Supp. 2d 922, 926-27 (N.D. Ohio 2004)(comprehensive provisions enacted by CAFRA in

§ 983(a) - including filing deadlines imposed on the Government - give claimant an adequate remedy at law for contesting a civil forfeiture; once Government commences administrative forfeiture, Rule 41(g) motions must be dismissed). The equitable relief Pena Arguelles seeks is available only in the absence of an adequate remedy at law, which as discussed herein, is not applicable.

Therefore, Pena-Arguelles has an adequate remedy at law via the DEA administrative forfeiture proceedings, and as such, his Corrected Motion for Return of Seized Property pursuant to Fed. R. Crim. P. Rule 41(g) (Doc. 2) is moot and should be dismissed.

WHEREFORE, the United States requests that Antonio Pena-Arguelles' Corrected Motion for Return of Seized Property pursuant to Fed. R. Crim. P. Rule 41(g)( Doc. 2) should in all things be DENIED.

Respectfully submitted,

ROBERT PITMAN  
United States Attorney

By: /s/  
Mary Nelda G. Valadez  
Assistant United States Attorney  
Asset Forfeiture Section  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
Tel: (210) 384-7040  
Fax: (210) 384-7045  
Texas Bar No. 20421844  
Attorneys for the United States of America

**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2012, the forgoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System, which will transmit notification of such filing to the following CM/ECF participants.

Cynthia Hujar Orr  
Goldstein, Goldstein & Hilley  
310 S. St. Mary's Street  
29th Floor  
San Antonio, Texas 78205

Donald H. Flanary, III  
Goldstein, Goldstein & Hilley  
310 S. St. Mary's Street  
29th Floor  
San Antonio, Texas 78205

Gerald Harris Goldstein  
Goldstein, Goldstein & Hilley  
310 S. St. Mary's Street  
29th Floor  
San Antonio, Texas 78205

Attorneys for Antonio Pena-Arguelles

/s/  
MARY NELDA G. VALADEZ  
Assistant United States Attorney  
Asset Forfeiture Section  
Tel: (210) 384-7040

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**ANTONIO PENA ARGUELLES,**

**Plaintiff,**

**V.**

**CASE NO. SA-12-MC-707-OLG**

**CHECK NUMBER 9552, DATED  
JULY 9, 2012, IN THE AMOUNT OF  
\$201,187.50,**

**Respondent.**

## ORDER

On this date came on for consideration the United States of America's Response to Antonio Pena-Arguelles' Corrected Motion for Return of Seized Property, and the Court having considered the same and being duly and fully apprised in all its premises is of the opinion that the Motion pursuant to Fed. R. Crim. P. Rule 41(g) is not well-founded and shall be, and hereby is, in all things DENIED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ORLANDO L. GARCIA  
UNITED STATES DISTRICT JUDGE